

Testimony of Eric Hammerling, Executive Director, Connecticut Forest & Park Association

Proposed Bills before the Planning & Development Committee on February 14 th , 2011	Support/ Oppose
S.B. 43: AN ACT EXPANDING THE RECREATIONAL LAND USE ACT.	Support
S.B. 90: AN ACT CONCERNING THE RECREATIONAL LAND USE ACT.	Support
H.B. 5254: AN ACT EXPANDING THE RECREATIONAL LAND USE ACT.	Support

Co-Chairs Cassano, Gentile, and Members of the Planning & Development Committee:

My name is Eric Hammerling and I am the Executive Director of the Connecticut Forest & Park Association, the first conservation organization established in Connecticut in 1895 and a leading advocate for the original Recreational Land Use Act of 1971. CFPA has offered testimony before the Legislature on issues such as sustainable forestry, state parks and forests, trail recreation, natural resource protection, and land conservation every year since 1897.

Thank you for raising S.B. 43, S.B. 90, and H.B. 5254! As you know, these are 3 out of 13 or more bills at this point that have been raised to restore recreational liability protection for municipalities and other related entities. CFPA cares passionately about preserving access to municipal lands because municipalities and municipal water companies own over 150,000 acres (estimated) that support public recreational activities across the state. Considered as a group, municipalities are the state's second largest landowners behind the State, and at CFPA we work closely with many towns because over 50 miles of the 825-mile long Blue-Blazed Hiking Trail System (built and maintained by CFPA volunteers) traverse municipal properties.

There are many reasons why we urge you to support these bills that would explicitly add municipalities and municipal entities as "owners" under the Recreational Land Use Act:

1. **Municipalities were once considered to be owners.** For 25 years, municipalities were considered to be "owners" under the Act as was reinforced in *Manning v. Barenz* (1992). However, when the ruling in *Manning v. Barenz* was reversed by *Conway v. Wilton* (1996), it showed that municipalities were no longer considered to be owners unless the Legislature clarified this in the Statute.

2. **Municipalities will close access to recreational areas.** Shortly after *Conway v. Wilton*, at least 25 towns closed, restricted, or held-off on acquiring open space due to liability concerns. In the wake of the \$2.9 million MDC jury verdict, \$8 million Waterbury sledding settlement, and other cases, it is no surprise that municipalities are considering closures of their recreational lands.
3. **Municipalities will be discouraged from developing or opening new recreational areas.** Municipal properties are becoming viewed increasingly as “liabilities” rather than as “assets.” This sends a chilling effect to town leaders regarding liabilities associated with recreation areas. In his testimony before the Environment Committee, the First Selectman of Harwinton recently stated:

Increased liability concerns will also be an important factor in determining whether we should move forward with any new recreational facilities or the purchase and protection of open space lands. Open space lands and ponds and other water resources can be difficult to monitor to ensure the safety of recreational users. Many small towns simply don’t have the resources to ensure that trails are always free from fallen limbs or debris that may pose a safety risk to hikers and bikers.
4. **Economic benefits from recreation.** In New England alone, the outdoor recreation economy contributes \$22.9 million and over 270,000 jobs. In addition, real estate values are bolstered by proximity to recreational areas. What happens to those benefits and values when areas like the MDC are closed?
5. **Other New England states have done this.** All 50 states have recreational liability statutes and our neighboring New England states Massachusetts (Ch. 21§17C(b)) and Rhode Island (Gen. §32-6-2 (3)) include municipalities as owners with the same liability protection as other landowners. This means that Connecticut residents will go out of state (and recreational visitors will diminish) if there are more recreational opportunities offered elsewhere.
6. **Policy consistency.** It does not make sense to single-out municipalities to not receive liability protection if encouraging public recreation on all lands is the goal of the Recreational Land Use Act.
7. **S.B. 831 does not offer total/absolute immunity.** Neither the level of liability protection nor the circumstances under which it would apply is changed by S.B. 831. Municipalities would not receive total immunity and would still be liable “for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity.”
8. **We all pay for these lawsuits.** It does not make sense to put municipalities in the position of having to spend money to defend and settle claims for recreational injuries that they cannot possibly prevent. Under current law, despite having some sovereign immunity protection, municipalities are forced to defend every lawsuit. Every property owner pays the price for these claims and settlements as well as for increased insurance premiums and deductibles.
9. **Where will the children play?** One of the reasons for our nation’s youth obesity crisis (and perhaps attention deficit disorder as well) is the large number of children who are addicted to TV and electronic games. Kids need safe outdoor areas for free play, and municipal lands are often the only lands available.

In Connecticut, municipalities have protected over 75,000 acres for open space/recreation, and over 1,000 miles of recreational trails wind through a mix of state, municipal, and private lands. However, due to recreational liability concerns, municipalities are considering restrictions to recreational access on their lands. Potential exposure to costly personal injury lawsuits has made municipalities skittish on recreational liability. Towns should not have liability for recreational accidents as long as they do not charge and negligence is not involved. We ask the General Assembly to fix this problem once and for all.

Recreational Liability in Connecticut

With passage of the Connecticut Land Use Recreation Act in 1971 (C.G.S. § 52-557f et seq.), the General Assembly recognized the importance of encouraging landowners to open their lands to the public by protecting landowners from personal injury lawsuits. For 25 years after the passage of the Act, towns were considered to be included under the Act as landowners.

Why doesn't the Recreational Liability Law Include Municipalities?

Ever since a 3-2 Supreme Court decision in *Conway v. Wilton* (1996) which overturned previous holdings of the court, municipalities (including entities such as the MDC, a "nonprofit municipal corporation") are no longer considered "owners" for this purpose and therefore are not covered under the Statute. Fortunately, the statute still provides strong protection for private, corporate, and utility landowners who host recreational activities on their lands without charging a fee. Similar liability protection is available to the State when an incident related to recreational use occurs on state-owned land (C.G.S. § 4-160). Given the existing protections for private, corporate, utility, and state landowners, omitting municipalities from protection does not make sense.

Why Must the General Assembly Fix the Recreational Liability Law for Municipalities?

- There are many recent examples where recreational liability lawsuits have had a chilling effect on municipalities providing recreational activities on municipal lands:
 - In July, 2010 the MDC revisited its recreational access policies and considered closure of its lands to the public in response to a \$2.9 million jury verdict found for a mountain biker who crashed into a gate at the West Hartford Reservoir;
 - In August, 2010, Waterbury lost an \$8 million verdict to a person who crashed into a metal bench while snow tubing at Fulton Park. In response, Middlebury is considering the closure of its most popular sledding area near Town Hall;
 - The town of Litchfield is opposing the opening of the Litchfield Greenway bicycle trail until issues of liability can be clarified; and
 - The town of Sharon is concerned about its exposure to liability as it considers a canoe/kayak access point along the Housatonic River.
- Under existing statutory and common law protections against liability, municipalities are still forced to incur expenses associated with settling or defending personal injury lawsuits. Irrespective of whether these lawsuits have merit, the expenses are paid for by ALL OF US.
- It would be poor public policy for the state to encourage municipalities to conserve land, provide bonding/funding for that purpose, and then support policies which lead to municipalities closing their lands to recreational access due to liability concerns (e.g., the State has held the policy of preserving 21% of the state's land area for over a decade).
- Therefore, the more personal injury lawsuits that are brought against municipalities, the greater the risk that the municipalities will close, restrict, or decide not to open recreational lands.

We ask the General Assembly to preserve public access to municipal lands for recreational purposes by restoring to our towns the liability protection that is available to State and private landowners!

SUPPORTERS OF RESTORING RECREATIONAL LIABILITY PROTECTION FOR MUNICIPALITIES

American Heart Association	League of American Bicyclists
Appalachian Mountain Club - CT (AMC-CT)	Lebanon Rails to Trails Committee
Benidorm Bikes	Litchfield Hills Council of Elected Officials
Berlin Bicycle	Lyman Kitchens
Biker's Edge	Manchester Cycle Shop
BikeWalkCT	New England Mountain Biking Association - CT Chapter (NEMBA - CT)
Central CT Regional Planning Agency (CCRPA)	New Haven Urban Design League
Central Naugatuck Valley Council of Governments	Northwestern Connecticut Council of Governments
Central Wheel Bike Shop	Old Goat Running Club
City of Hartford	Plainville Greenway Alliance
Clarke Cycles	Preston Parks and Recreation Department
Collinsville Canoe & Kayak	Ragged Mountain Foundation
Connecticut Association of Conservation and Inland Wetlands Commissioners (CACIWC)	REI, Inc.
Connecticut Conference of Municipalities (CCM)	Rivers Alliance of CT
Connecticut Forest & Park Association (CFPA)	Road Runners Club of America - CT Chapter
Connecticut Horse Council (CHC)	Sartorius Sports
Connecticut Land Conservation Council (CLCC)	Savethemdctrails.org
Connecticut Recreation and Parks Association	Sierra Club - CT Chapter
Council of Governments of the Central Naugatuck Valley	Sporthouse Inc.
Council of Small Towns (COST)	Storrs Center Cycle
Eastern Mountain Sports	Suburban Sports
Farmington Canal Rail-to-Trail Association	The Alliance for Biking and Walking
Farmington Valley Trails Council	The Beat Bike Blog
Fleet Feet Sports	The Bicycle Cellar
Friends of CT State Parks	The Bike Shop
Hartford Track Club	Thread Rolling Company
Harvey & Lewis Opticians	Tolland Bicycle
Horst Engineering & Manufacturing Company	Town of Middlebury
Housatonic Valley Association (HVA)	Town of Oxford
Housatonic Valley Council of Elected Officials	Yankee Pedalers Bicycle Club
Internat'l Mountain Biking Association (IMBA)	Upper Housatonic Valley National Heritage Area
	Windham Region Council of Governments